

MADCM Board Meeting
April 16, 2021
SCAO Update

Directives, Resources, and Information

Covid-19 Information

- Comprehensive information concerning the Judicial Branch’s response to Covid-19 can be found [here](#).
- [Amendment of Administrative Order No. 2020-17](#) -Priority Treatment and New Procedure for Landlord/Tenant Cases (April 9, 2021). Amends the AO with the new expiration date of the Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19. The new expiration date is June 30, 2021.

General:

- The [Problem-Solving Court Annual Report](#) is now available
- On March 31, the Michigan Indigent Defense Commission (MIDC) released two publications on incorporating social workers into public defense. As use of social workers expands in defender offices across the state, MIDC requested the reports be shared. Courts may be interested in learning more about the role of social workers with respect to pretrial and sentencing advocacy. [The two publications, a report and a manual, can be accessed here](#).
- A [memo](#) from Secretary of State Court Liaisons, David Handsor and Melissa Noll, indicating a Sobriety Court Removal Procedural Change effective immediately (specifically regarding court form MC 393).
- Information regarding the [Attorney General's address confidentiality program](#), the associated jury exemption, and the handling of Personal Identifying Information.
- [Memo](#) to courts regarding the criminal justice reform legislation and impacts on the case management systems.
- [Memo](#) regarding revisions to Uniform Law Citations (ULC).
- [Memo](#) regarding revisions to multiple probation-related forms.
- [Memo](#) regarding revised and new forms related to the clean slate legislation.
- [Overview of criminal justice reform bills](#) and their impact on various court procedures.
- Memo from SCA Tom Boyd concerning [Writs of Habeas Corpus](#).
- [A memo from Tom Boyd](#) indicating that the Michigan Department of Health and Human Services has offered to provide free naloxone to judges, courts, and probation officers.
- Paul DeLost, Virginia, former president of NACM and National Judicial Task Force to Examine State Court's Response to Mental Illness work group member, has published a brief entitled [Addressing the Mental Health and Well-Being of Judges and Court Employees](#).
- [FAQs](#) about MIDC Standard 5 – public defense should operate independently from the judiciary.

Court Rules & Administrative Orders

Proposed

- MCR Cite:** **1.109 – Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access**
- ADM File No: [2002-37](#)
- Comment Expires: July 1, 2021
- Staff Comment: The proposed amendment of MCR 1.109 would address e-Filing issues relating to updating authorized user accounts and e-service of documents that are returned as undeliverable to a registered e-mail address.
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- MCR Cite:** **6.302 and 6.610 – Pleas of Guilty and Nolo Contendere; Criminal Procedure Generally**
- ADM File No: [2018-29](#)
- Comment Expires: July 1, 2021 (republished for comment on 3/25/21)
- Staff Comment: The proposed amendments of MCR 6.302 and MCR 6.610 would eliminate the ability for a court to establish support for a finding that defendant is guilty of the offense charged as opposed to an offense to which defendant is pleading guilty or nolo contendere. The sentencing guidelines make clear that offense variables are to be scored on the basis of the “sentencing offense alone,” not the charged offense. Further, an “offense to which defendant is pleading” would include the charged offense (if defendant is pleading to the charged offense) as well as any other offense that may have been offered by the prosecutor, so the “charged offense” clause may well be unnecessary.
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- ADM Order:** **2020-X – Proposed Adoption of a Mandatory Continuing Judicial Education Program**
- ADM File No: [2019-33](#)
- Comment Expires: July 1, 2020
- Staff Comment: This proposed administrative order would establish a mandatory continuing judicial education program for the state’s justices, judges, and quasi-judicial officers. ***Pending results of public hearing on 9/23/20.**
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- MCR Cite:** **2.403, 2.404, and 2.405 – Case Evaluation; Selection of Case Evaluation Panels; Offers to Stipulate to Entry of Judgment**
- ADM File No: [2020-06](#)
- Comment Expires: July 1, 2020
- Staff Comment: The proposed amendments were in large part produced by a workgroup convened by the State Court Administrative Office to review and offer recommendations about case evaluation. ***Pending results of public hearing on 9/23/20.**
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- MCR Cite:** **2.302 – Duty to Disclose; General Rules Governing Discovery**
- ADM File No: [2020-19](#)
- Comment Expires: March 1, 2021

Staff Comment: The proposed amendment of MCR 2.302 would require transcripts of audio and video recordings intended to be introduced as an exhibit at trial to be transcribed. ***Pending results of public hearing held on 3/24/21.**

MCR Cite: 1.109 and 8.119 – Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access; Court Records and Report; Duties of Clerks

ADM File No: [2020-26](#)

Comment Expires: February 1, 2021

Staff Comment: The proposed amendments of MCR 1.109 and 8.119 would allow SCAO flexibility in protecting an individual’s personal identifying information and clarify when a court is and is not required to redact protected personal identifying information. More specifically, MCR 1.109(D)(10) is about filer-created documents (not court-created/court-issued documents), and it says:

- Court NOT required to redact PII from filer-created document before providing a requested copy of the document
- Court NOT required to redact PII from filer-created document before providing access to the document via a publicly accessible computer at the courthouse
- Court IS required to redact PII from filer-created document before making that document directly accessible online (such as through the court’s website)

MCR 8.119(H) is about court-prepared/court-issued documents (like an Order), and it says:

- Court IS required to redact PII from court-issued documents before it can be shared with the public (this includes documents requested (in person and online), accessed on a publicly accessible computer at the courthouse, and directly accessed online such as on the court’s website)

***Pending results of 3/24/21 hearing.**

Adopted:

MCR Cite: 2.105 – Process; Manner of Service

ADM File No: [2020-20](#)

Effective Date: May 1, 2021

Staff Comment: The amendment of MCR 2.105 establishes the manner of service on limited liability companies.

MCR Cite: 1.109 - Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access

ADM File No: [2019-48](#)

Effective Date: May 1, 2021

Staff Comment: The amendment of MCR 1.109 requires a signature from an attorney of record on documents filed by represented parties. This language was inadvertently eliminated when MCR 2.114(C) was relocated to MCR 1.109 as part of the eFiling

rule changes.

MCR Cite: **4.201 – Summary Proceedings to Recover Possession of Premises**
ADM File No: [2019-41](#)
Effective Date: May 1, 2020
Staff Comment: The amendment of MCR 4.201 requires disclosure of the right to object to venue in actions brought under the Summary Proceedings Act for landlord/tenant proceedings in district court, consistent with MCL 600.5706.

MCR Cite: **2.223, 2.305, 2.314, 2.403, 2.506, 3.206, 3.211, 3.229, 3.606, 3.618, 3.903, 3.920, 3.922, 3.936, 3.943, 3.972, 3.973, 6.001, 6.425, 6.430, 6.445, 6.610, 7.118, 7.202, 7.210, 7.303, 8.120, 9.116, and 9.118 of the Michigan Court Rules, Rescission of Administrative Order No. 1999-3, Amendment of Administrative Order No. 2020-20, and Amendment of Rule 1.4 of the Michigan Rules of Professional Conduct**

ADM File No.: [2019-09](#)
Effective Date: March 24, 2021
Staff Comment: These amendments update cross-references and make other nonsubstantive revisions to clarify the rules.

MCR Cite: **1.109 and 8.119 - Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access; Court Records and Report; Duties of Clerks**

ADM File No.: [2017-28](#)
Effective Date: January 1, 2021
Staff Comment: The amendments make certain personal identifying information nonpublic and clarify the process regarding redaction. ****The effective date of this order has been delayed to 7/1/21. Information on the extension:***

- ADM File No. 2017-28: [Amendment of Administrative Order No. 1999-4](#) (extends the effective date of the May 22, 2019 order that restricts personal identifying information).
Issued: 11/18/20
Effective: Immediately
- ADM File No. 2017-28: [Amendment of Administrative Order No. 2019-4](#) (extends the effective date of the portion of the order regarding personal identifying information)
Issued: 11/18/20
Effective: Immediately

MCR Cite: **2.226 – [New] Change of Venue; Transfer of Jurisdiction; Orders**
ADM File No: [2002-37](#)
Effective Date: May 1, 2020
Staff Comment: The addition of MCR 2.226 would clarify the process for change of venue and transfer orders.

Legislation

None

Case Law

[People v Hughes](#), ___ Mich ___ (2020) – Lisa met Ronald and agreed to perform sexual acts in exchange for money. At some point during the evening, Lisa called her drug dealer and he came over and sold the couple some crack cocaine. Later that night, the drug dealer returned and stole a safe from a bedroom. Lisa identified the defendant as the drug dealer and robber. A detective submitted a warrant affidavit to search defendant’s property for evidence related to *drug trafficking*. During the search, a cell phone was found and the detective performed a forensic examination of the phone extracting all of the phone’s data. About a month after the data was extracted, the prosecutor on the armed robbery case, asked the detective to conduct a second search of the defendant’s cellphone for information related to the *robbery*. Defendant was later convicted of armed robbery and on appeal argued that the search warrant permitted officers to search for evidence of *drug trafficking* not *armed robbery*. The Court of Appeals rejected the arguments. **The Michigan Supreme Court held that “[a] warrant to search a suspect’s digital cell-phone data for evidence of one crime does not enable a search of that same data for evidence of another crime without obtaining a second warrant.”** Where “the officer’s review of defendant’s cell-phone data for incriminating evidence relating to an armed robbery was not reasonably directed at obtaining evidence regarding drug trafficking—the criminal activity alleged in the warrant— . . . the search for that evidence was outside the purview of the warrant and thus violative of the Fourth Amendment.” *Id.* at _____. Reversed and remanded.

[People v Thue](#), ___ Mich App ___ (2021) – Defendant was convicted of assault and battery after a road rage incident. He was sentenced to one-year probation. As a condition of probation, defendant was not permitted to use marihuana, including medical marihuana. Defendant filed a motion to modify the terms of his probation to allow him to use medical marihuana. The district court held a hearing, heard arguments from defendant and prosecutor, and denied defendant’s motion. Defendant appealed to the circuit court and they affirmed. After an in depth review of the Michigan Medical Marihuana Act (MMMA), the Court of Appeals concluded that the provisions of the Michigan Probation Act that allow a court to prohibit a probationer’s MMMA-compliant use of marihuana impermissibly conflict with the MMMA and constitute a “penalty” in violation of MCL 333.26424(a). **The Court of Appeals held “a court cannot revoke probation upon the use of medical marijuana that otherwise complies with the terms of the MMMA.”** “Accordingly, the district court erred in prohibiting defendant from MMMA-compliant marijuana use as a term of his probation and defendant’s motion to modify the terms of his probation to allow him to use medical marijuana should have been granted.”